

ST 05-13

Tax Type: Sales Tax

Issue: Exemption From Tax (Charitable or Other Exempt Types)

**STATE OF ILLINOIS
DEPARTMENT OF REVENUE
OFFICE OF ADMINISTRATIVE HEARINGS
CHICAGO, ILLINOIS**

**THE DEPARTMENT OF REVENUE
OF THE STATE OF ILLINOIS,**

No: 04 ST 0000

Sales Tax Exemption Number

v.

**ABC Kenneth J. Galvin
ASSOCIATION,**

TAXPAYER

Administrative Law Judge

RECOMMENDATION FOR DISPOSITION

APPEARANCES: Mr. David Jolivet, Jolivet & Templer, on behalf of the ABC Association; Mr. John Alshuler, Special Assistant Attorney General, on behalf of the Department of Revenue of the State of Illinois.

SYNOPSIS: On November 30, 2004, the Illinois Department of Revenue (hereinafter the "Department") denied the second request of the ABC Association (hereinafter "ABC") that the Department issue it an exemption identification number so that it could purchase tangible personal property free from the imposition of use tax as set forth in 35 ILCS 105/1 *et seq.* On December 20, 2004, ABC protested the Department's decision and requested a hearing, which was held on April 25, 2005, with Jane Doe, President of ABC, Mary Doe, Treasurer of ABC, John Doe, Past President of ABC and former United States Peace Corps volunteer, and Sue Doe, Director of the Center for Urban Education at

University, testifying. The sole issue to be determined at the hearing was whether ABC qualified for an exemption identification number as “a corporation, society, association, foundation or institution organized and operated exclusively for charitable ... purposes.” 35 ILCS 105/3-5(4). Following a careful review of the evidence and testimony presented at the hearing, I recommend that ABC be granted an exemption identification number.

FINDINGS OF FACT:

- 1.The Department’s case, inclusive of all jurisdictional elements, is established by the admission into evidence of the Department’s second denial of exemption dated November 30, 2004. Tr. pp. 7-8; Dept. Ex. No. 1.
- 2.ABC was incorporated in 1981 under the Not For Profit Corporation Act of Illinois. ABC’s Bylaws state that its purposes are a) to promote world peace and understanding; b) to provide a source of requested human resources to developing nations and to our community; and c) to promote understanding between people of the United States and those of the third world. Tr. pp. 10-14, 25-30; App. Ex. Nos. 1 and 3.
- 3.ABC is exempt from federal income taxes under Section 501(c)(3) of the Internal Revenue Code. Tr. pp. 12-13; App. Ex. No. 2.
- 4.ABC does not have capital stock or shareholders. Tr. pp. 21, 41.
- 5.ABC sponsored a global awareness program in the Chicago public schools with the objective of educating students on overseas cultures, different peoples and different geographies. Returned Peace Corps volunteers taught in the program. Students submitted essays about what they learned from the lectures. The best essays were selected, interviews were conducted and

one student from each school and a chaperone went to either a Peace Corps country or an Indian reservation for a cross-cultural experience. Students were paired with students from New York's global awareness program. Each participating school donated \$350. Some funds were received from corporations including Rotary Foundation of New York, Fel-Pro Mecklenburger Foundation and ABC's membership. Tr. pp. 14, 47-51; App. Ex. Nos. 5 and 6.

6.ABC sponsored a program called "Connections" at a High School in Chicago. Students were given cross-cultural education and finalists were given a trip to Ghana for a cross-cultural experience. Tr. pp. 14-15.

7.ABC sponsored a daylong workshop for Chicago public school teachers on how to bring global educational activities into the classroom using techniques and skills that Peace Corps volunteers had brought back from their assignments. Tr. p. 15.

8.ABC participates in two United States Peace Corps partnership programs called "Worldwide Schools" and "Peace Corps Week." These programs are designed to provide a national curriculum for returning Peace Corp volunteers who want to give a lecture to students about their experiences. The United States Peace Corps puts together a series of materials, including handouts, bookmarks and maps for the programs. Tr. pp. 21-22.

9.ABC maintains a speakers bureau. If a teacher or a scout leader needs a volunteer to speak on a specific geographical area, ABC can put them in touch with someone with experience in that culture. Tr. p. 23.

10. ABC raises money with an annual fundraising event open to the public called “Founder’s Day,” silent auctions, solicitations, and membership dues. Approximately 100 people, members and nonmembers, attend the Founder’s Day dinner. Tr. pp. 16, 38.
11. For year-end, January, 2004, ABC took in \$15,801 in revenue. 52% of the revenue was from the Founder’s Day dinner and auction, 24% was from membership dues and 23% was from the sale of calendars and other donations. Tr. pp. 42-43; App. Ex. No. 4.
12. For year-end, January, 2004, ABC spent \$20,069. 27% of the expenditures were for “Partnership Projects,” 25% were expenses associated with the Founder’s Day dinner, 14% were for office expenses. Tr. pp. 43-44; App. Ex. No. 4.
13. “Partnership Projects” are projects managed by Peace Corp volunteers working in the field. ABC gives preference to funding requests from Chicago area Peace Corp volunteers. In 2005, ABC funded a request for \$1,500 from a Chicago area volunteer to create a community garden in Senegal. The funds were used to buy seed, buckets and build a well. Checks are made payable to the United States Peace Corps, which funnels the money to the volunteer on the project. ABC has also funded projects in Ghana and El Salvador. ABC tries to develop a relationship with the Peace Corp volunteer requesting the funds and pairs the volunteer with a Chicago area school. Tr. pp. 15-16, 43-44.
14. ABC has two classes of members. General members include any former Peace Corps volunteer or staff person. A person is considered a Peace

Corps volunteer or a staff person if he or she was sworn into the Peace Corps. Associate members are “any other person who may join ABC.” “A person shall become a member upon payment of his or her annual dues.” Dues are \$15/year. Tr. pp. 21, 33; App. Ex. No. 3.

15. ABC communicates with its members through a newsletter and an electronic list-serve. Membership and the ABC Board of Directors meet on a monthly basis. ABC reaches out to newly returned Peace Corp volunteers to get them involved as members. Approximately 25 to 50 members attend meetings. ABC currently has 302 members. Tr. pp. 16-18, 21, 24, 32-33.
16. At membership meetings, announcements about volunteer activities are made. At the April, 2005, meeting, a woman made a presentation and requested donations for medical supplies to send overseas. In 2004, ABC sponsored a national conference of 1,000 returned volunteers from throughout the United States. The monthly meetings in 2004 were geared toward getting volunteers to participate in activities for the conference. Tr. p. 33.
17. ABC operates a website in order to share information about its services with the public and to communicate with its members. People needing international speakers usually find ABC by its website. Tr. p. 23.

CONCLUSIONS OF LAW:

ABC seeks to qualify for an exemption identification number as a “corporation, society, association, foundation or institution organized and operated exclusively for charitable...purposes[.]” 35 ILCS 105/3-5(4); 35 ILCS 120/2-5(11). The applicant bears

the burden of proving “by clear and convincing” evidence that the exemption applies. Evangelical Hospitals Corp. v. Department of Revenue, 223 Ill. App. 3d 225 (2d Dist. 1991). Moreover, it is well established that there is a presumption against exemption and that therefore, “exemptions are to be strictly construed” with any doubts concerning the applicability of the exemption “resolved in favor of taxation.” Van’s Material Co. Inc. v. Department of Revenue, 131 Ill. 2d 196 (1989). An examination of the record establishes that ABC has demonstrated, by the presentation of testimony and through exhibits and argument, evidence sufficient to warrant an exemption from sales tax.

In Methodist Old People’s Home v. Korzen, 39 Ill. 2d 149 (1968), the Illinois Supreme Court outlined several factors to be considered in assessing whether an organization is actually an institution of public charity. To qualify, an organization should (1) have no capital stock or shareholders; (2) earn no profit or dividends, but rather derive its funds mainly from public and private charity and hold such funds in trust for the objects and purposes expressed in its charter; (3) dispense charity to all who need and apply for it; (4) provide no gain or profit in a private sense to any person connected with it and; (5) appear to place no obstacles in the way of those who need and would avail themselves of the charitable benefits it dispenses.

The above factors are guidelines for assessing whether an institution is a charity, but are not definitive requirements. DuPage County Board of Review v. Joint Comm’n on Accreditation of Healthcare Organizations, 274 Ill. App. 3d 461 (2d Dist. 1995). Thus, a rigid formula is not to be applied to all fact situations but instead “courts consider and balance the guidelines by examining the facts of each case and focusing on whether and how the institution serves the public interest and lessens the State’s burden.” *Id.* at 469. An institution need not provide any direct financial assistance to individuals to qualify as

a charity. In Methodist Old Peoples Home, the Supreme Court stated that “charity is a gift to be applied ... for the benefit of an indefinite number of persons ... for their general welfare – or in some way reducing the burden of government.” Methodist Old Peoples Home at 156, 157. Accordingly, the law does not limit charity to the provision of financial assistance.

Applying the above guidelines, I conclude that ABC meets significant criteria for determining whether it qualifies as a charitable organization. One of the most important factors in determining if an organization is a charity is that the benefits it provides serve the public interest or in some way reduce the burden of government. *Id.* ABC’s Bylaws state that its purposes is to educate its members and the public by providing a focal point for unified activities to assure the realization of the goals for which the United States Peace Corps was created, specifically a) to promote world peace and understanding; b) to provide a source of requested human resources to developing nations and to our community; and c) to promote understanding between people of the United States and those of the third world. Tr. p. 13; App. Ex. No. 3.

Jane Doe, President of ABC, testified that ABC focuses on implementing the third goal above. “The third goal is once you return home educating the American public about the cultures of the country you lived in. [ABC] facilitates activities to do what we call third goal activities. To do global education and cross-cultural education and activities in the Chicago land area.” Tr. p. 13. ABC’s third goal, as stated in its Bylaws, is also a goal of the United States Peace Corps. The United States Congress has declared that one of the purposes of the United States Peace Corps is “to help promote a better understanding of the American people on the part of the peoples served and a better understanding of other peoples on the part of the American people.” 22 USC § 2501. In

order to further this goal of promoting a better understanding of other peoples on the part of the American people, the Director of the United States Peace Corps “shall, as appropriate, encourage, facilitate, and assist activities carried out by former volunteers in furtherance of such goal and the efforts of agencies, organizations and other individuals to support or assist in former volunteers’ carrying out such activities.” 22 USC § 2517. The testimony and evidence presented at the hearing show that ABC is an organization that assists returned Peace Corps volunteers in promoting an understanding between people of the United States and those of the third world.

ABC operates several programs which assist in promoting this understanding. ABC sponsored a global awareness program in the Chicago public schools, whose purpose was to educate the students on overseas cultures, different peoples and different geographies. Returned Peace Corps volunteers taught in the program. Tr. pp. 14, 47-51; App. Ex. Nos. 5 and 6. ABC sponsored a program called “Connections” at Englewood High School in Chicago. Students were given cross-cultural education and a student was given a trip to Ghana for a cross-cultural experience. Tr. pp. 14-15. ABC sponsored a daylong workshop for Chicago public school teachers on how to bring global educational activities into the classroom using techniques and skills that Peace Corps volunteers had brought back from their assignments. Tr. p. 15.

Additionally, ABC participates in two United States Peace Corps partnership programs called “Worldwide Schools” and “Peace Corps Week.” These programs are designed to provide a national curriculum for returning Peace Corp volunteers who want to go into a school and give a lecture to students about their experiences. The United States Peace Corps puts together a series of materials, including handouts, bookmarks and maps for these programs. Tr. pp. 21-22. ABC maintains a speakers bureau so that if

an organization would like a returned Peace Corp volunteer to speak on a specific geographical area, ABC can put them in touch with someone with experience in that culture. Girl scout leaders and teachers sometimes request a volunteer to come in. ABC had requests for speakers on cultures affected by the recent tsunami “to come in and share their experience with the students who may be raising funds for the various programs.” Tr. p. 23. The activities demonstrate that ABC is dispensing charity to all who need and apply for it, one of the guidelines from Methodist Old Peoples Home.

ABC’s programs allow the organization to accomplish its third goal and to achieve one of the objectives of the United States Peace Corps, to promote a better understanding of other peoples on the part of the American people. The promotion of a better understanding serves the public interest, which is a characteristic of a charitable organization. The Director of the Peace Corps has been authorized to encourage, facilitate and assist activities carried out by former Peace Corps volunteers in furtherance of this better understanding and the efforts of organizations which assist in former volunteers’ carrying out such activities. ABC is such an organization and accordingly, I conclude that ABC, through its programs, is reducing a burden on government.

ABC was incorporated in 1981 under the Illinois General Not-For-Profit Corporation Act. Tr. p. 11; App. Ex. No. 1. ABC is exempt from federal income tax under Section 501(c)(3) of the Internal Revenue Code. Tr. p. 12; App. Ex. No. 2. ABC does not have capital stock or shareholders. Tr. pp. 21, 41. ABC operates a website in order to share information about its services with the public and to communicate with its members. People needing international speakers usually find ABC by its website. Tr. p. 23. ABC’s advertising of its services on its website shows that it is not placing obstacles in the way of those who need and would avail themselves of the benefits it dispenses,

thereby meeting another criteria of Methodist Old Peoples Home for qualifying as a charity.

ABC raises money with an annual fundraising event open to the public called “Founder’s Day,” silent auctions, solicitations, and membership dues. Approximately 100 people, including both members and nonmembers, attend the Founder’s Day dinner. Tr. pp. 16, 38. For year-end, January, 2004, ABC took in \$15,801 in revenue. 52% of the revenue was from the Founder’s Day dinner and auction, 24% was from membership dues, and 23% was from the sale of calendars and other donations. Tr. pp. 42-43; App. Ex. No. 4.

ABC has two classes of members. General members include any former Peace Corps volunteer or staff person. A person is considered a Peace Corps volunteer or a staff person if he or she was sworn into the Peace Corps. Associate members are “any other person who may join ABC.” “A person shall become a member upon payment of his or her annual dues.” Dues are \$15/year. Tr. pp. 21, 33; App. Ex. No. 3. ABC currently has 302 members. Tr. p. 32. As a general rule, membership organizations do not qualify for exempt status because they operate primarily for the benefit of a limited class of persons who receive and maintain membership therein. Rogers Park Post No. 108 v. Brenza, 8 Ill. 2d 286 (1956). Consequently, any “charity” such organizations dispense in the course of their endeavors is but an incidental by-product of operations that do not benefit an “indefinite number of persons.” *Id.*

In ABC’s case, however, the membership dues are funding the charitable activities that ABC sponsors and must be considered contributions from the members which benefit an indefinite number of persons. ABC members do not receive any special benefit for being a member of the organization. Tr. p. 21. With the Founders Day dinner,

membership dues, sales of calendars and other donations, the majority of ABC's funding is coming from public and private charity, another characteristic of a charitable organization.

Moreover, ABC's funding is used for the charitable purposes expressed in its charter. For year ended January, 2004, ABC spent \$20,069. 27% of the expenditures were for "Partnership Projects," 25% were expenses associated with the Founder's Day dinner, 14% were for office expenses. Tr. pp. 43-44; App. Ex. No. 4. "Partnership Projects," the largest outlay in the financial statements for 2004, are funding requests from Peace Corp volunteers working in the field. ABC gives preference to requests from Chicago area Peace Corp volunteers. ABC funded a request for \$1,500 from a Chicago area volunteer to create a community garden in Senegal. The funds were used to buy seed, buckets and build a well. ABC has also funded projects in Ghana and El Salvador. Tr. pp. 15-16, 43-44. ABC does not have an office space and pays no rent. Tr. p. 17. No officer, director or committee member receives any compensation for acting in such capacity and all service is strictly on a voluntary basis. Dept. Ex. No. 3. ABC members pay their own way at membership meetings. Tr. p. 18. Based on the above, I conclude that ABC does not provide gain or profit in a private sense to any person connected with it.

For the foregoing reasons, it is recommended that the ABC be granted an exemption identification number.

Kenneth J. Galvin

June 16, 2005